IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8944 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SADIK MOHAMMED ISMAILBHAI MASI

Versus

CENTRAL MEDICAL ADMISSION CELL

Appearance:

1. Special Civil Application No. 8944 of 2002

MR MA KHARADI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/09/2002

ORAL JUDGEMENT

Rule. Ms.Manisha Shah, Ld.AGP appears and waives service of rule on behalf of respondent. With the consent of parties, matter is taken up for final hearing

today.

2. The short facts of the case are that the petitioner who is a physically handicapped person has passed 12th standards (HSC Science stream) and he has secured 62.62% of marks. He was issued certificate, dated 13.6.2000 by Orthopedic Surgeon, General Hospital, Godhra, which is a Govt.hospital whereby his physical disability is assessed and it is certified that the petitioner is having 45% of physical disability. The petitioner at the time of making application for getting admission in MBBS/First BDS/First B.Physio courses again obtained certificate dated 13.6.02 from the Orthopedic Surgeon, General Hospital, Godhra, i.e. the same hospital which had issued certificate earlier copy whereof is produced at page 12 wherein at column 3(b) the extent of disability of the petitioner is mentioned as between 40% to 60%. However, it is the case of the petitioner that on merits the petitioner stood eligible for getting admission in the category of "physically handicapped persons", but the respondent-authority, i.e. the Central Medical Admission Cell denied the admission on the ground that the physical disability of the petitioner is below 40%, and hence, this petition.

3. On behalf of the respondent, Dr.S.M.Shah of B.J.Medical College, Ahmedabad has filed affidavit in reply contending that a meeting of the Central Medical Admission Committee was held on 22.7.02 and the Committee had taken decision that the applicants under physical handicapped category (locomotor disabled) should be asked to appear before the Committee of Orthopedic Surgeons of Civil Hospital, Ahmedabad for review of their disability and the decision of the said Committee regarding locomotor disability will be treated as final. It has been submitted that the aforesaid Committee accordingly reviewed the physical disability of the petitioner and has found that the extent of physical disability of the petitioner is below 40% and therefore the petitioner is kept outside the zone of consideration in the category of physically handicapped and hence the admission has not been granted. It has also been submitted that pursuant to the decision dated 22.7.02 all those candidates who have applied in the category of physically handicapped were considered for the purpose of reviewing of their physical disability and the suitability for the course for which application was made was also examined by the said Committee. It has been submitted that wherever the said committee opined that the disability is above 40% they have been considered and it is also examined that whether they are suitable or not as that disability is

such which does not come in the way of students or not and thereafter the admission process is undertaken on the basis of interse marks obtained by the candidate concerned. It has been submitted on behalf of the respondent that since the earlier decision was taken on 22.7.02 of forming the committee for reviewing of disability of all persons it can not be said to be arbitrary or unreasonable.

4. Mr.Karadi for the petitioner submitted that Rule 2.8 of the Rules for admission to Medical branch does not provide for review of disability and he submitted that it only provides for the assessment of suitability of said candidate pursuant to the judgment dated 27.11.2000 of this court in Spl.C.A.No.7410/00. Mr.Karadi therefore submitted that the review of disability was not provided under Rules and therefore the Committee constituted for the said purpose has transgressed the limits of its powers which was otherwise not contemplated or rather not observed in the judgment of this court in the above referred Spl.C.A.No.7410/00. Mr.Karadi also submitted that when the Govt.hospital at Godhra has certified the disability at 45%, the petitioner could not have been kept outside the zone of consideration on the ground that upon review of disability since the petitioner is found to have disability of below 40%. It has been submitted that since the action of reviewing the disability of the petitioner is not warranted the same can not be considered and Mr.Karadi submitted that upon the documents which are produced on behalf of the respondent the petitioner is otherwise found to be suitable for the course in Medical branch and therefore depriving the petitioner from the zone of consideration is illegal and he therefore submitted that appropriate directions may be given to the authorities for considering the case of the petitioner as eligible in the category of physically handicapped persons.

5. However, it has been submitted by the Ld.AGP on behalf of respondent that the guidelines for evaluation of permanent physical disability in the lower limbs are issued by the Medical Council of India and said guidelines are to be followed for the purpose of certifying the physical disability of a person. I would have accepted the said contention, but if the said guidelines as per the stand of the Ld.AGP are binding to the committee constituted for reviewing of disability then it equally binds to Orthopedic Surgeon of the Civil Hospital, Godhra. Inspite of the same, a situation has arisen that there are two certificates for the very person for assessment of physical disability and

therefore it is more required that the State Govt so far as its own doctors are concerned should issue instructions for strict compliance of such guidelines.

6. I would have gone by the opinion of the Committee comprising Orthopedic Surgeons of Civil Hospital, Ahmedabad for arriving at the final conclusion regarding the percentage of disability since they can be said to be the experts in the said field. However, there is also another certificate before this court issued by another Orthopedic Surgeon of Civil Hospital, Godhra who can also be said to be expert for the purpose of certifying the disability of a physically handicapped person and he is also a Govt.doctor. In view of these two different assessments of physical disability of the petitioner, it would be more required that some independent authority or who is rather an expert in the said field examines or rather re-assesses the physical disability of the petitioner and his opinion should be accepted by the petitioner as well as by the Central Admission Committee.

7. In this regard, it would be worthwhile to consider that the Parliament has enacted the Act 1 of 1996 being the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with a view to extend the special benefits in the field of Education, employment etc to the physically handicapped persons and possibly the State has formed a policy of making reservations on account of aforesaid mandate of the legislature. Section 60 of the Act provides that every State Govt may by notification appoint a Commissioner for persons with disabilities for the purpose of this Act. The Ld.AGP has stated before the court that the State Govt has already appointed the Commissioner under the Act of 1995 for such purpose. In my view, the aforesaid Commissioner can rather be a suitable person for the purpose of reassessing the physical disability of the petitioner.

8. In the above view of the matter, I find that the following directions would meet with the ends of justice:

(i) The physical disability of the petitioner shall be assessed by the Commissioner who was appointed under the aforesaid Act of 1995 within a period of 15 days from today.

(ii) If the Commissioner finds that the physical disability of the petitioner is above 40% then the petitioner will be considered as eligible for the purpose of getting admission in the category

of physically handicapped persons and the respondent shall grant the admission to the petitioner if otherwise available to the petitioner on the basis of interse merit amongst physically handicapped persons.

9. Before parting with, I would like to observe that it is expected that the State Govt should form, by way of policy, a definite yardstick for the purpose of assessment of physical disability of a person concerned. If such yardsticks are provided and are made mandatory, the same would help the doctor concerned to certify the percentage of physical disability. Of course, it will be for the Government to decide, but if such measures and yardsticks are provided by definite standards the genuine physically handicapped persons will not be deprived of their legitimate claims in the fields of education, employment etc as per the Act of 1995. I am not expressing any further view on the said aspect and I find it proper to leave it at that.

10. In the result, petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

11. It is made clear that the aforesaid order is passed considering the peculiar facts and circumstances of the instant case and this shall not be a precedent to re-open the admissions already granted.

12. Office shall give writ to the petitioner latest by 23.9.02.

18.9.2002 (JAYANT PATEL,J)